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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,231	07/09/2001	Hans R. Frankfort	DP6900 US NA	6221

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WILMINGTON, DE 19805

EXAMINER

TENTONI, LEO B

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 07/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/901,231

Applicant(s)

FRANKFORT ET AL.

Examiner

Leo B. Tentoni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-13 and 16-20, drawn to a process of making filaments/yarns, classified in class 264, subclass 103.

II. Claims 14 and 15, drawn to filaments/article, classified in class 428, subclass 364.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed can be made by another and materially different process such as a process wherein the cooling gas travels either perpendicular to the direction of travel of the filaments, or countercurrent to the direction of travel of the filaments.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Charles E. Krukiel, applicant's representative, on 20 June 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-13 and 16-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14 and 15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the

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United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 2, 4-6, 12, 13 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Sweet et al (U.S. Patent 5,824,248).

Sweet et al (see the entire document; in particular, note col. 1, lines 4-9 and 27-40; col. 2, line 34 to col. 3, line 24; col. 5, line 53 to col. 7, line 16; Examples) teach a melt spinning process for making polymeric filaments as set forth in the instant claims.

8. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Collins et al (U.S. Patent 5,250,245).

Collins et al (see the entire document; in particular, note col. 3, lines 62-63; col. 9, lines 40-47; col. 12, line 59 to col. 13, line 26) teach a process of making polyester yarn as set forth in the instant claim.

9. Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Nguyen et al (U.S. Patent 6,444,151; issued from Application No. 09/547,854 cited in the instant specification)

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the

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invention ``by another," or by an appropriate showing under 37 CFR 1.131.

Nguyen et al (see the entire document; in particular, note col. 4, lines 4-7 and col. 13, lines 26-39) teach a melt spinning process for making polymeric filaments as set forth in the instant claims.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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12. Claims 7, 8, 11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweet et al (U.S. Patent 5,824,248) as applied to claims 1, 2, 4-6, 12, 13 and 16-18 above, and further in view of Collins et al (U.S. Patent 5,250,245).

Sweet et al (see the entire document; in particular, note col. 1, lines 4-9 and 27-40; col. 2, line 34 to col. 3, line 24; col. 5, line 53 to col. 7, line 16; Examples) teach a melt spinning process for making polymeric filaments, except that Sweet et al do not teach the specific chain branching agents, a laboratory relative viscosity (LRV) of above 22 (claim 11) or an LRV of above 22.5 (claim 19). Collins et al (see the entire document; in particular, note col. 3, lines 62-63; col. 9, lines 40-47; col. 12, line 59 to col. 13, line 26) teach a process of making polymeric filaments including the chain branching agents (Collins et al cite U.S. Patent 4,945,151 as cited also on page 11 of the instant specification) and an LRV value of 23, and these aspects would have been obvious to one of ordinary skill in the art at the time the invention was made in the process of Sweet et al in view of Collins et al principally in order to adjust properties (e.g., dyeability) of the filaments.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leo B. Tentoni whose telephone number is (703) 308-3834. The examiner can normally be reached on Monday - Friday (6:30 A.M. - 3:00 P.M.).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on (703) 308-3853. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

*Leo B. Tentoni*

Leo B. Tentoni  
Primary Examiner  
Art Unit 1732

lbt  
July 8, 2003